

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT AND SOLANO COUNTY
OFFICE OF EDUCATION

OAH CASE NO. 2012080847

ORDER DENYING REQUEST TO
VACATE ALL DATES; AND ORDER
CONTINUING PREHEARING
CONFERENCE

The due process hearing (DPH) in this case is currently set to begin on November 27, 2012. The prehearing conference (PHC) is to take place on November 19, 2012. On November 19, 2012, Student filed a request to vacate the dates in this matter on the basis that the parties have reached a “final settlement agreement that is being circulated for signature”.¹ Student requests that a status conference be scheduled on November 28, 2012.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party’s excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) The Office of Administrative Hearings (OAH) considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

¹ The District was notified of Student’s request to vacate the dates, as a copy of the request was served on the District’s attorney.

While Student represents that the parties have reached a final settlement agreement in the matter, this agreement, at this time, appear to be only an agreement in principle as the parties have not yet signed off, or otherwise executed a written settlement agreement resolving all issues. Thus, OAH will not vacate the PHC and the DPH dates until the parties have a fully executed settlement agreement, and a proof of settlement is filed with OAH. The signature page of a written settlement agreement may serve as a proof of settlement.

Therefore, **the request to vacate all dates is denied at this time.** Parties may file a new request to vacate all dates and set a status conference, accompanied with a proof of settlement of all issues pending resolution in this matter.

Nonetheless, based on the representation of the attorney for Student, the parties are close to finalizing a written settlement agreement resolving all issues in this matter. Thus, OAH believes that a continuance of the PHC date is appropriate. OAH has reviewed the request and considered all relevant facts and circumstances. OAH finds good cause to continue the PHC date as follows:

Prehearing Conference: November 26, 2012 at 1:30 PM (telephonic)

The DPH dates remain as calendared.

IT IS SO ORDERED.

Dated: November 19, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings